



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 30-AUG-2021

ORM Number: SPK-2011-00924

Associated JDs: PJD, SPK-2011-00924, 21-SEP-2011

Review Area Location¹:

State/Territory: CA City: County/Parish/Borough: San Joaquin County

Center Coordinates of Review Area: Latitude 38.0154 Longitude -121.0158

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide and included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
SPK-2011-00924, ED-02b	0.011 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Flows only in response to precipitation events. Runoff from Bellota Substation impervious surfaces is collected via a rip-rapped outlet and delivered into wetland swale SWS-10b, then flows via culvert to wetland swale SWS-10a, and into ephemeral drainage ED-02b. Channel banks are steep-sided and vegetation above scour line is compositionally upland.
SPK-2011-00924, SWS-10a	0.005 acres	(b)(1) Non-adjacent wetland	Wetland swale does not abut an (a)(1)–(a)(3) water; is not subject to inundation from an (a)(1)–(a)(3) water in a typical year; and is not physically separated from an (a)(1) –(a)(3) water only by any natural or artificial feature. Wetland swale receives water from direct precipitation and collected runoff from Bellota substation impervious surfaces.
SPK-2011-00924, SWS-10b	0.006 acres	(b)(1) Non-adjacent wetland	Wetland swale does not abut an (a)(1)–(a)(3) water; is not subject to inundation from an (a)(1)–(a)(3) water in a typical year; and is not physically separated from an (a)(1) –(a)(3) water only by any natural or artificial feature. Wetland swale receives water from direct precipitation and collected runoff from Bellota substation impervious surfaces.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: *Delineation of Aquatic Resources Update for the North Central Valley Energy Center Project, San Joaquin County, California*, dated August 2020, prepared by Dudek. This information is sufficient for purposes of this AJD.

Data sheets prepared by the Corps: *Title(s) and/or date(s)*.

Photographs: *Ground Photos: Delineation of Aquatic Resources Update for the North Central Valley Energy Center Project, San Joaquin County, California*, Appendix B, (July 2020).
Aerial Photos: Google Earth Pro 7.3.3.7786. (22 May 2020 – Maxar Technologies 2021); 14 March 2016; 29 March 2015; 23 March 2014). San Joaquin County, California, Latitude 38.014987°N, longitude 121.015804 °W, eye alt 900 ft. Retrieved August 24, 2021, from desktop application.

Corps Site visit(s) conducted on: *Date(s)*.

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s)*.

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

- USDA NRCS Soil Survey: *Title(s) and/or date(s)*.
- USFWS NWI maps: U.S. Fish and Wildlife Service, 1 May 2021, USFWS National Wetlands Inventory, accessed August 24, 2021 at URL <https://www.fws.gov/wetlands/arcgis/rest/services/Wetlands/MapServer>
- USGS topographic maps: *Title(s) and/or date(s)*.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	U.S. Geological Survey, 2019, USGS TNM Hydrography (NHD), accessed August 24, 2021 at URL https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer .
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The dates of a number of wet season aerial images (see Section III.A.) of the study area were processed through the Antecedent Precipitation Tool (APT) to determine whether the images were captured within the normal periodic range of precipitation variables, with the intention of identifying images that support the conclusion that feature ED-02b is an ephemeral channel. None of the images indicated the presence of flowing water within feature ED-02b. One image (14 March 2016) indicated the presence of soil saturation and/or standing water within wetland features SWS-10a and SWS-10b. These features drain to ED-02b, however in this image, flow and/or saturation was not present within the channel, and the point of downstream confluence of ED-02b with other features (outside of the study area) appeared dry. The APT indicated that the 14 March 2016 image was taken in the wet season, during severe drought, with antecedent conditions wetter than normal overall. The prior two 30-day periods were both considered wet, and the last (days 60-90) was considered normal. APT results for the 23 March 2014 wet season image were also useful: There was no evidence of saturation or standing water in the image, it was captured during extreme drought, and antecedent conditions were normal. The remaining images cited in Section III.A. were not as informative, as they were either taken during the dry season or resulted in antecedent conditions that were drier than normal.

The above, coupled with observations that the channel morphology of ED-02b is generally steep-sided and transitions abruptly from bare bed to upland vegetation, support the conclusion that this aquatic resource is ephemeral.

Sampling dates relevant to features SWS-10a and SWS-10b were also processed with the APT in order to assess the accuracy of the feature boundaries as drawn. Although data collection was performed during the dry season (13 July 2020), drought conditions were mild, and antecedent

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

conditions were normal, supporting a conclusion that the feature boundaries are likely accurate and do not require additional data collection.

- C. Additional comments to support AJD:** There is no evidence to support that seasonal wetland swales SWS-10a and SWS-10b could be inundated by an (a)(1)–(a)(3) water in a typical year. It appears that the only hydrologic inputs to these features are direct precipitation and collected runoff from Bellota Substation impervious surfaces.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.